

Appl. No. 10/825,792
Docket No. 9215
Amdt. dated May 15, 2007
Reply to Advisory Action mailed on May 7, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 12 - 43 are pending in the present application. No additional claims fee is believed to be due.

Claims 12, 14, 25, 30, 33, 39, 41, and 43 have been amended herein. Support for these amendments is found in the specification on page 8, line 20 through page 9, line 26, and in Figures 5-10.

Objection to Drawings Under 37 CFR §1.83(a)

The Office Action states that the drawings must show every claimed feature of the invention. Accordingly, figure 8 has been amended to show a plurality of elastomeric elements on the top face of the brushing surface, as claimed in claim 39 and supported in the specification on page 10, lines 9-10.

Rejection Under 35 USC §112, First Paragraph

Claims 33-40 have been rejected under 35 USC §112, second paragraph, as being indefinite. Specifically, the Office Action states that Claim 33 recites a limitation that has an insufficient antecedent basis. Accordingly, Claim 33 has been amended to give the limitation a sufficient antecedent basis.

Rejection Under 35 USC §102 Over Maser

Claims 12-32 have been rejected under 35 USC § 102 over Mason (US 4,827,551). Applicants respectfully traverse.

As understood, Maser discloses an electrical device comprising a cylindrical massage head and/or a toothbrush that move in a rotary direction. (Col. 1, lines 26-27). In Maser's fourth embodiment, the head is axially subdivided, half comprising protuberances and the other half comprising a toothbrush. (Col. 2, lines 48-56). Therefore, in Maser, the entire circumference of the head is covered by either massaging protuberances or a toothbrush.

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In contract, in amended Claims 12, 25, and 30, the present invention's toothbrush comprises a side wall between the brushing surface and the massaging surface, as the head is one continuous cylindrical surface. Maser fails to disclose a side wall between its massaging protuberances and brushing parts of the head.

Because Maser fails to disclose each and every element of the present invention, Applicants respectfully assert that Maser does not anticipate the present invention.

Rejection Under 35 USC §103(a) Over Psiharis in view of Maser

Claims 12-22, 25-28, 30, and 33-43 have been rejected under 35 USC § 103(a) as being unpatentable of Psiharis (US 2,253,210) in view of Maser (US 4,827,551). Applicants respectfully traverse.

Psiharis and Maser do not establish a *prima facie* case of obviousness because they do not teach or suggest all of the claim limitations of the present claims. Specifically, Psiharis and Maser do not contain a teaching or suggestion to combine Maser's staggered rows of projections with Psiharis's massaging surface, nor do the references suggest the desirability of such a combination.

As understood, Psiharis discloses a gum massage device to be iused in conjunction with a toothbrush. (Col. 1, lines 1-4). Psiharis discloses several embodiments of its massaging unit. One embodiment comprises two longitudinally extending ridges along the edges of the massaging unit (Fig. 1, col. 2, lines 27-34), to which transverse grooves can be added (Fig. 4, col. 3, lines 1-5). Other embidiments add transverse grooves (Fig. 5, col. 3, lines 22-25) or rectangular depressions (Fig. 6, col. 3, lines 33-39) to the massaging unit itself. Still other embodiments extend the edges of a toothbrush head (Figs. 9 and 10, col. 3, line 66 – col. 4, line 4), and then provide indentations to such an extension (Fig. 8, col. 3, lines 44-56).

As discussed above, Maser discloses an electrical device comprising a cylindrical massage head and/or a toothbrush that move in a rotary direction. (Col. 1, lines 26-27). The surface of the head in Maser is not flat, but rounded. (Figures 1-4).

In contract, as reflected in amended claims 12, 25, 30 and 33, the present invention has a bottom face comprising a generally flat elastomeric massaging surface,

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wherein the massaging surface comprises a plurality of projections oriented in staggered rows. While the Office Action contends that the staggered rows of projections in Maser could simply be transferred to the back of Psiharis's various embodiments to create the present invention, Applicants assert that there is no teaching or suggestion or even desirability to combine the Maser projections with the Psiharis massaging surface.

For example, placing Maser's staggered rows of projections on the massaging surfaces in Psiharis's figures 1, 4, 5, and 6 would not be desirable, because many of the projections would be in grooves and would not be able to touch a subject's mouth. An while Psiharis's figures 8, 9, and 10 show a flat surface on the back of the toothbrush, they differ critically from the present invention because the flat surface is not a elastomeric surface. That is, in those embodiments, the flat surface is the toothbrush head material, composed of "bone, Celluloid or any other suitable, relatively rigid material." (Col. 2, lines 4-5). Furthermore, the staggered rows of projections in Maser are on a rounded or cylindrical rubber surface, and there is not teaching or suggestion from the references as to why or how to place the staggered rows of projections on Psiharis's flat rigid surface.

The fact that a prior art device could be modified so as to product the claimed device is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification.¹ "We do not 'pick and choose among the individual elements of assorted prior art references to recreate the claimed invention,' but rather, we look for 'some teaching or suggestion in the references to support their use in the particular claimed combination.'"² "Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."³

Applicants respectfully assert that there has been no showing of a teaching or motivation to combine Psiharis and Maser to create the present invention, and furthermore, no suggestion of the desirability of such a modification. Therefore, a *prima*

¹ *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125 (Fed. Cir. 1984).

² *Symbol Technologies, Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1576, 19 USPQ2d 1241 (Fed. Cir. 1991).

³ *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999).

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facie case of obviousness has not been established. Applicants respectfully submit that the claims are in a condition for allowance.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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By

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Date: May 17, 2007
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